

**MINUTES OF HARRISONBURG PLANNING COMMISSION**

**September 14, 2022**

The Harrisonburg Planning Commission held its regular meeting on Wednesday, September 14, 2022, at 6:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Brent Finnegan; Adriel Byrd; Kathy Whitten; Valerie Washington; Dr. Donna Armstrong; Laura Dent; and Jim Orndoff.

Also present: Thanh Dang, Assistant Director of Community Development; Adam Fletcher, Director of Community Development; and Nyrma Soffel, Office Manager/Secretary.

Chair Finnegan called the meeting to order and said that there was a quorum with all members present and asked if there were any corrections, comments or a motion regarding the August 10, 2022 Planning Commission minutes.

Commissioner Whitten moved to approve the minutes.

Commissioner Orndoff seconded the motion

All members voted in favor of approving the August 10, 2022 Planning Commission minutes.

**New Business – Public Hearings**

***Public hearing to consider a request from Katerin Mejia-Centeno for a special use permit to allow a major family day home at 922 Jefferson Street***

Chair Finnegan read the request and asked staff to review.

Ms. Dang said The Comprehensive Plan designates this site as Neighborhood Residential. These areas are typically older residential neighborhoods, which contain a mixture of densities and a mixture of housing types, but should have more single-family detached homes than other types of housing. This type of land use highlights those neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. Infill development and redevelopment must be designed so as to be compatible with the desired character of the neighborhood.

The following land uses are located on and adjacent to the property:

- Site: Single-family dwelling, zoned R-2
- North: Single-family dwelling, zoned R-2
- East: Duplex, zoned R-2
- South: Single-family dwelling, zoned R-2
- West: Across Jefferson Street, single-family dwelling, zoned R-2

The applicant is requesting a special use permit (SUP) per Section 10-3-40 (6) of the Zoning Ordinance to allow a “major family day home” (MFDH) within the R-2, Residential District. The property is situated along Jefferson Street south of the intersection with Suter Street. MFDH’s are defined in the Zoning Ordinance as: *“A child day care program offered in the residence of the provider or the home of any of the children in care for five (5) through twelve (12) children under the age of thirteen (13), exclusive of any children who reside in the home, when at least one (1) child receives care for compensation.”* MFDHs are permitted only by SUP in all residential districts, except the R-5 district, where they are not permitted.

When considering a MFDH it is helpful to know how they differ from minor family day homes. Minor family day homes are allowed by right within all residential districts and are defined as: *“A child day care program offered in the residence of the provider or the home of any of the children in care for one (1) through four (4) children under the age of thirteen (13), exclusive of any children who reside in the home, when at least one (1) child receives care for compensation. A minor family day home shall be considered a home occupation and therefore requires that a home occupation permit be granted by the zoning administrator; however, no conditions more restrictive than those imposed on residences occupied by a single family shall be imposed on the day home.”*

In a letter submitted by the applicant, they describe that they plan to care for a maximum of 10 children and would operate Monday through Friday from 6am to 6pm. At this time, they do not plan to hire employees. Staff is not recommending conditions on the hours of operation or facility schedule, and therefore, if the request is approved as submitted, the hours of operation and facility schedule may change at times. Furthermore, their letter describes that families would “park on the side of the street or on the driveway so they may enter through the main door of the house.” The property has a single lane driveway with a parking area to the rear of the principal building.

The applicant has been advised by staff to work with the Virginia Department of Education (VDOE) for licensure requirements. The VDOE regulates licensing standards of family day homes and ensures that the facility and the operation of the MFDH are favorable to the welfare of the children in care. Approval and licensing from the VDOE require an applicant to maintain compliance with local ordinances and laws. VDOE requires applicants to submit a form signed by the locality’s Zoning Administrator to verify that the use is allowed at the requested location. Approval of the SUP would allow for the applicant to operate as a MFDH at the subject location with the proper licensing from the VDOE.

Staff has no concerns with the operation of the Major Family Day Home at this location, and also believes more childcare facilities are needed in the community. Staff recommends approval of the SUP request with no conditions.

Chair Finnegan asked if there any questions for staff.

Commissioner Byrd asked is the difference between the minor and major day home four?

Ms. Dang said it is the number of children. The minor is when you care for up to four children. The major family day home would be up to 12 children.

Councilmember Dent said they had to have the SUP approved first before they apply to have the license and that appears to be the case.

Ms. Dang said yes. As part of the regulations, the Department of Education, in the past it was the Department of Social Services, had sought zoning approval. We would fill out a form that the applicant would provide to the agency to prove that they obtained zoning approval.

Chair Finnegan asked if there were any more questions for staff. Hearing none, he opened the public hearing and invited the applicant or applicant's representative to speak to their request.

Katerin Mejia-Centeno, applicant, came forward to speak to her request. I would be taking care of the children, if you allow me, at 922 Jefferson Street.

Dave Wiens, 1520 College Avenue, came forward with Ms. Mejia-Centeno in support of the request.

Commissioner Whitten said I did some research about this. I was uncomfortable when we talked yesterday because I thought, as it is said in the country, sometimes you can get your cart before the horse. I was concerned because there is a 54-page document with all the regulations and all the things that you have to do to make this happen. In reviewing, I noticed that Prince William County has an entire ordinance for this. Step one is to obtain the permit, or the proper permission from the City for the zoning. That being said, I think you have your horse in the right position. It is step one. Not knowing anything about that, I felt that there was a lot of consideration for a daycare center before I would say yes to the zoning.

Commissioner Byrd said I noticed that the pavement in the back where your car was parked. Do you foresee, on a rainy day, how many cars can move around the residence?

Ms. Mejia-Centeno said three or four coming in and out.

Mr. Wiens said I discussed with her that, from previous experience, one of the questions that you are going to be concerned about is traffic and disruption to the neighborhood. I made it very clear to her that she needs to make sure that there cannot be a lot of people hanging around. They have to drop the kids off and pick them up and not be disruptive to the neighborhood. She said that she understood. That was her plan.

Mr. Wiens talked about his knowledge of the applicant and said that he was very supportive of her.

Commissioner Whitten said she seems to be a hard-working woman. Daycare is something that we need. Daycare is something that is needed in that neighborhood. I am in favor of her request.

Chair Finnegan asked if there were any questions for the applicant's representative. Hearing none, he asked if there was anyone in the room or on the phone wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Orndoff moved to recommend approval of the request.

Commissioner Whitten seconded the motion.

Chair Finnegan said that childcare is one of the issues that Faith in Action has decided to focus on this year. That was voted on by a number of congregations. This is a high priority for the City, for the faith community and for those families in this community.

Councilmember Dent said childcare is one of the prime priorities for City Council, along with housing, health and mental health. It is also a top priority for the Chamber of Commerce because they know how important it is for the workforce. This kind of solution is perfect because it is an "it takes a village" kind of approach. Let neighbors take care of each other provided that they have the background and the licensing. It is clear that she will be going through that process and this is the start of that. I support this as well.

Chair Finnegan called for a roll call vote.

Commissioner Armstrong	Aye
Commissioner Byrd	Aye
Councilmember Dent	Aye
Commissioner Orndoff	Aye
Commissioner Washington	Aye
Commissioner Whitten	Aye
Chair Finnegan	Aye

The motion to recommend approval of the SUP request passed (7-0). The recommendation will move forward to City Council on October 11, 2022.

**New Business – Other Items**

None.

**Unfinished Business**

None.

**Public Comment**

None.

**Report of Secretary and Committees**

***Proactive Code Enforcement (On Hold)***

***Rockingham County Planning Commission Liaison Report***

Commissioner Orndoff said there were a number of items on their agenda, none of which were contentions. There was an ordinance amendment to update front setbacks. It was approved. There was a rezoning request from Cathcart Properties Inc. to rezoning three acres from B-1 General Business to PMF Planned Multi-Family and 15.94 acres from A-2 General Agricultural to PMF Planned Multi-Family. The properties are located between Apple Valley Road and Stone Spring Road. This is a continued public hearing from August 2, 2022. The request was approved (5-0). The second rezoning request was from S&B Ventures LLC to rezone 5.87 acres from A-2 General Agricultural to R-5 Planned Neighborhood. The property is located on the northeast corner of the Boyers Road and Port Republic Road intersection. That was approved (5-0). The third was from Joshua Helmuth to rezone eight acres from A-2 General Agricultural to I-1C Industrial with Conditions. The property is located on the northeast corner of the intersection of Cecil Wampler Road and South Valley Pike. It was approved (5-0). The next was from J&D Group LLC to rezone 6.77 acres from A-2 General Agricultural to R-5 Planned Neighborhood. This property adjoins the City of Harrisonburg and is located between Pear Street and the existing Cobbler's Valley subdivision. It was approved (5-0).

There were two items of unfinished business. One was amending a section of their ordinance so that any demonstrative materials submitted with a rezoning application shall become legally binding elements of the rezoning. The request was tabled June 7<sup>th</sup>. They did not take a vote other than send it on to the Board of Supervisors for action. The other was Amendment to the Rockingham County Code, Chapter 17 of the Zoning Ordinance Supplemental Standards for Certain Land Uses, to add supplemental standards for "Kennel Operation, Commercial." It had been tabled and sent along back to the Planning Commission. They forwarded it on to the Board of Supervisors (5-0). There was no disagreement, opposition or conversation of any significance. Everything went straight through.

Commissioner Whitten said they are actually building all the affordable housing we need. I am happy about that. They will probably actually build it, too.

Chair Finnegan said I recall a request at Rockingham County, maybe two or three years ago, for a development in McGaheysville that had quite a bit of opposition and was pulled. It did not get built.

Commissioner Orndoff said these are all in areas right around the City.

Commissioner Whitten said they are. They are adjoining.

Commissioner Orndoff said one of them shares a property line with the City. The Pear Street development.

Commissioner Whitten said the Stone Spring Road and Apple Valley Road is also very close.

### ***Board of Zoning Appeals***

None.

### ***City Council Report***

Councilmember Dent said Planning Commission recommended denial of the alley closing behind 276 Campbell Street and City Council agreed and denied the request. The subdivision on Pear Street request was approved. The rezoning of the parcels at Waterman Drive was approved after some discussion.

Things went weird about the Homestays and Short-Term Rentals ordinance amendment. Several of the City Council members felt that a duplex, if the owner resides in one unit, ought to be able to rent out the other unit. They ultimately voted to table it while we figure that out. Councilmember Baugh and I both expressed that, while oversight seemed to be the main argument for allowing it in duplexes, there were other concerns such as the commercialization and undermining of the neighborhood, and the taking units off the market. I expressed that was a strong concern for me. Ultimately, I agreed to table it. Only later that night did I realize that there could be a massive, unforeseen consequence once we finalize the Zoning and Ordinance Update when duplexes and accessory dwellings are proposed to be allowed in low-density zoning. Would that mean we would have a proliferation of STRs? If I had thought about that during the City Council meeting, I would have said no. We need to make the amendment to make that clear. I will bring that up once it comes back to us. That is certainly that we ought to consider as part of the STR discussion. If we open it for good, for duplexes to be allowed, once everyone can have a duplex if that goes through, then what are the consequences? What are the possible strategies? Do we table it until the Zoning Ordinance goes through? If so, then how long will that be? We have not had any real estimate on the timing because staff is short.

Mr. Fletcher said it is a valid observation. The Zoning Ordinance rewrite is at very early drafts. If it got approved the way that you are describing, there could be some concern from that perspective. If they continue to allow for duplexes to have one of units that is a true dwelling be a transient accommodation, especially if it is a homestay which is by-right and never has to come to public hearing. If you want to prevent that from happening, it could be a concern. What we need to continue to discuss, at the staff level, is that from my observations and what I was listening to last night, I still have some questions about what City Council was looking for. If the code remains as is, it would not prevent someone from buying a four-plex, or a tri-plex, and doing the same.

Councilmember Dent said they could live in one and rent the other three out.

Mr. Fletcher said if you want it to have unlimited number of nights and more than 90 nights a year, you would have to get a SUP. With a by-right homestay, you could do it. There are more questions that we have and I have expressed those. We will come back with something for them.

Councilmember Dent said take that into account, as well.

Chair Finnegan said I am frustrated that this was not acted on last night. I think that the regulations that we have been wrestling with, the past several years, we have landed at a compromise position where we are not allowing them to be built anywhere and everywhere, and we are not shutting them down completely. As Mr. Fletcher was saying, we allow them by-right for 90 nights or less. I am hopeful that City Council will adopt the amendment. One way of looking at it is “closing the accessory dwelling unit loophole.”

Councilmember Dent asked what do you mean by loophole?

Chair Finnegan said meaning that you can build accessory dwelling units (ADU) on your property and rent those out to people from out of town, when we need housing for people living here.

Councilmember Dent said you mean worded as it is now with it worded as it is now with “property”? Anything on the property?

Chair Finnegan said yes. We are not saying that STRs cannot operate here. They can operate by-right for 90 nights. They do not have to come to us. I feel like the regulations we have are fair. They are generous. They are a compromise.

Commissioner Whitten said that they are over-generous. There is a yellow house over there where, on graduation weekend, at least part of that house rents for \$400 per night. I would say that is generous. If you do not that will increase the value of that house, which increases the values of all the houses, that is the way real estate works. It makes it much more expensive for everybody to purchase a house. I do not like that. I think that when we have a City Councilperson who would dare to talk about the financial incentive being the brass ring of why he does not want to approve this revision, he wants to look out for the best interests of the people that are trying to rent out their houses for money, there is a problem with me. I think that is an economic benefit that the City should not be giving property owners. We have hotels where people could stay. There are a lot of hotels. They want to do business too, and we need to support them as well.

Commissioner Armstrong said that there are a lot of new hotels. I travel around that area and those parking lots are never full.

Commissioner Whitten said I know that some people like to stay in STRs, but we are a small town and, if we want to keep driving our neighborhood prices up... The last house in my neighborhood sold for almost \$600,000.

Commissioner Byrd said when I heard about this duplex thing, I thought how does this...?

Chair Finnegan said because it is the part of the same structure.

Commissioner Byrd said that in an apartment building, all the apartments are part of the same structure. They are separate living places. They have different addresses. They have different mailboxes.

Chair Finnegan said that basement apartments and ADUs also have separate mailboxes and addresses.

Commissioner Byrd said that if they get a mailbox there, then they went through a process to make sure that was known. You build a duplex because you can get two separate dwellings on the same piece of land. It is still separate buildings. I do not understand how duplexes got caught up in that discussion.

Chair Finnegan said it is the “property.”

Commissioner Byrd said we are changing it from the “property” to the buildings on the properties. If it comes back, then I will deal with it then.

Chair Finnegan asked if it is expected to come back to this body.

Mr. Fletcher said that is yet to be determined. What we were asked to do is to provide an opportunity to allow a duplex scenario by SUP. I have questions about what the intent of that was. I do not know if the text would come back to the Planning Commission. I do not have enough information.

Commissioner Whitten said you did the due diligence to bring forward what you thought was wanted and it was rebuffed. I will not be planning to vote on STR until this is resolved. I think that is the position we should take.

Mr. Fletcher said another point of interest would be that City Council advised staff to draft regulations associated with group homes. We will look at options. It is associated with opportunities for sober living arrangements, also known as group homes, that are for protections offered by the Fair Housing Act.

Chair Finnegan asked what is the difference between a group home and a single-room occupancy (SRO)?

Mr. Fletcher said I do not know.

Mr. Russ said the way that Oxford House, an organization that sets up and facilitates running a lot of group homes across the nation, the way they distinguish themselves from SROs is that you are not supposed have locks on your bedroom door. You can lock it while you are in there, but not locks that require a key so that you can lock your door while you are gone. The idea is that it is supposed to be like a family because you are supporting one another in maintaining sobriety rather than renting a bedroom in a shared facility but not a part of a community.

Mr. Fletcher said staff will work on some draft language. It will be a Zoning Ordinance amendment. You will see it in the near future.

Councilmember Dent said that my main comment about that which I discussed with the City Manager and City Attorney was that it ought to apply equally to all organizations that want to do



these kinds of housing. I have heard from other organizations that Oxford House was bending the rules and that this other organization could not do the same thing that Oxford House was. It should be fair to all organizations that want to have sobriety homes like that. That is the intent.

Chair Finnegan said that the Gemeinschaft Home, in the county, is a similar type of home.

Councilmember Dent said that one is reentry from incarceration and has on-site staff and that is the difference.

### **Other Matters**

Chair Finnegan said that for next month we currently have eight items for six locations.

Ms. Dang said that staff recommends that we continue to have one meeting for all of these items.

Chair Finnegan said if you time where the time comes out, it is not public comments, it is behind this table.

Commissioner Whitten and Councilmember said that is okay.

Chair Finnegan said we have three STRs and it sounds like the STR ordinance amendments are in flux. We do not know what that is going to be. Commissioner Whitten, you said you are going to move to table them or not vote for them?

Commissioner Whitten said I think that until City Council can make a decision on this, we should not go forward with any of these. I do not think that is unreasonable.

Councilmember Dent said that is interesting because there was one applicant last night who was in the process of applying for an arrangement with a duplex, right?

Ms. Dang said that is correct.

Councilmember Dent said it would not be permitted if we passed that. If we say no to that one, for example, until it is all resolved, he is still stuck in limbo.

Chair Finnegan said my question would be, since these are case by case, it would be helpful if there are one or more that are going to be impacted by that specific ordinance amendment. If there are others that are not going to be affected by that, it would be good to know.

Ms. Dang said two of them are not affected by the Zoning Ordinance amendment and one of them could be affected. Based on a preliminary review of the applications and past experience, we recommend having one meeting.

Chair Finnegan asked if there were any objections to having one meeting in October. There were no objections.

Commissioner Whitten said she has a question regarding the property on North Main Street that the City purchased for the low-barrier shelter. That was purchased for \$700,000. I cannot find a budget for staff, for programming, renovations or anything with regard to that. The news says that it will be open next fall. Where is the money coming from for that? I have been asked and I do not know. I know it is not American Rescue Plan Act (ARPA) funds because you cannot use ARPA funds for that.

Councilmember Dent said that we used ARPA funds to buy the property, but we would have to budget for ongoing operating costs.

Commissioner Whitten said there is a new high school that is going to require a lot of funds. I would like to know, so I am going on record in the minutes saying that I want to know. There are programming costs, renovations. It has to be a lot of renovations. That is a big, old building. To bring it up to code is going to cost a whole lot of money. I would be nice to answer that question.

Chair Finnegan said I have a different concern about that location, and it is the lack of sidewalks and safe crossings. You have a sidewalk on one side, and the CSB just up a block from there. There is no safe way to cross Route 11. There is a crosswalk at Vine Street. The next crosswalk is a mile up the road.

Commissioner Whitten said we can safely say that there are a lot of street improvements for a big price tag, too.

Chair Finnegan said pedestrian safety for people to access there and also get to the CSB needs to be prioritized.

Commissioner Whitten said I would like to put more money into major family day homes instead.

The meeting adjourned at 6:45 p.m.

---

Brent Finnegan, Chair

---

Nyrma Soffel, Secretary